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Supreme Court, U.S.
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No. 95-1637

In The

Supreme Court of the United States

October Term, 1995

SEARIVER MARITIME, INC.,

Petitioner,

v.

EXXON SEAMEN'S UNION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER STATEMENT OF THE CASE

A. Background

The Exxon Seamen's Union (hereinafter referred to as the "union") is, and has been, the collective bargaining representative of the unlicensed personnel employed in the deck, engine and steward's departments of the Exxon Shipping Company (hereinafter referred to as the "company" or "Exxon").

The company and the union were parties to a collective bargaining agreement covering the period of July 31, 1985 through August 31, 1987.

After eight months of unsuccessful negotiations, effective April 1, 1988, the company implemented its final proposal. The discipline clause of the 1985-1987 agreement was continued in full force and effect. Pursuant thereto, an employee could only be discharged for "cause", which was interpreted to mean "just cause". The parties' grievance and arbitration agreement was also continued in full force and effect.

On April 1, 1988, the company unilaterally implemented a drug and alcohol testing policy. On April 1, 1988, the company issued a Policy Statement on Employee Alcohol and Drug Use. That policy contained a provision regarding "reasonable cause" testing. That policy provided in relevant part:

> The company also has the right to require employees to submit to medical evaluation or alcohol or drug testing where cause exists to suspect alcohol or drug misuse. A positive test result or refusal to submit to a drug test is

> grounds for disciplinary action, including dismissal.

(App. 66a).

By letter dated September 27, 1988, the company notified the employees of its intent to strictly enforce the above policy. The company, despite this letter, did not change its policy statement which implied that discharge was not mandatory for a refusal to submit to a drug test and did not change the contractual requirement that any discipline was subject to the "just cause" provision.

B. Alan Cash's Grievance

The grievant in this case is Alan Cash, who was a pumpman employed for thirteen (13) years with Exxon. In early May of 1989, Mr. Cash was transferred from the oil-tanker Exxon Benicia in Japan to the oil-tanker Exxon Washington anchored in San Francisco Bay. From May 10, 1989 to May 15, 1989, Mr. Cash was quartered in the second pumpman's room – a small, poorly furnished room. Mr. Cash was working around the clock to get the ship fit for sea.

On May 15, 1989, the chief pumpman left the Exxon Washington due to a family emergency. Mr. Cash moved into that room. The chief pumpman's room was not cleaned before Mr. Cash moved in. Due to fire safety rules, the room door was always left unlocked.

On May 17, 1989, the company conducted an unannounced search of the Exxon Washington. During that search, in the chief pumpman's cabin, the search team found several marijuana seeds on and under the rug, an

ash by the bedpost, and two little balled up pieces of paper which turned out to be marijuana cigarette ends ("roaches") in the pouch of a suitcase used by Mr. Cash.

Based upon these findings, the company ordered the grievant to submit to a drug test. The union had consistently contested the drug and alcohol policy, and on the advice of the union representative, the grievant refused to submit to a drug test. Mr. Cash was discharged. Mr. Cash's discharge was grieved. The parties were unable to resolve the grievance, thus the matter was submitted to arbitration.

C. The Arbitration Proceeding

After three days of hearing, and the submission of post-hearing briefs, the neutral arbitrator issued an Opinion and Award dated November 27, 1992. (App. 35a). The union-designated arbitrator concurred with the Opinion and Award; the employer-designated arbitrator dissented. (App. 63a, 64a).

The arbitrator found that the discharge of Mr. Cash was not for just cause. (App. 63a). The arbitrator found that Mr. Cash did not have possession of the controlled substance scattered in his room. (App. 60a, 61a). Thus, the arbitrator concluded that there was no "cause", "reasonable cause", "probable cause" or "just cause" to order Mr. Cash to submit to a drug test. (App. 61a). In finding that there was no cause to order Mr. Cash to submit to a drug test, the arbitrator made note of certain material facts such as: Mr. Cash was only in the room 1 1/2 days prior to the search and only for a few hours daily (App. 59a); the cabin had not been cleaned before Mr. Cash

moved in (App. 59a); other persons had full access to the room because the door was unlocked (App. 59a); the room had been previously occupied (App. 59a); the materials discovered were scattered around the room which would lead a reasonable person to the conclusion that the materials belonged to someone else (App. 59a-60a); and the arbitrator took note of a prior arbitration award wherein an employee who was discharged for refusal to submit to a drug test after a search disclosed a marijuana roach and an alligator clip, was reinstated without pay because there was doubt as to whether the grievant possessed the material found. (App. 41a, 42a). The arbitrator ordered that Mr. Cash be reinstated with full seniority but the period of his discharge was to be deemed a disciplinary suspension without pay. (App. 63a).

D. Post-Arbitration Proceedings

Exxon moved to vacate the arbitration award and the union moved to confirm same. By Opinion and Order dated December 8, 1994, the District Court confirmed the arbitration award. (App. 23a-34a).

Exxon filed an appeal. In an Opinion filed January 11, 1996, the Court of Appeals for the Third Circuit affirmed the decision of the District Court. (App. 1a).

REASONS FOR DENYING THE WRIT

I. PUBLIC POLICY WAS NOT VIOLATED BY CONFIRMATION OF AN ARBITRATION AWARD WHEREIN THE ARBITRATOR DETERMINED THAT THE EMPLOYER DID NOT HAVE REASONABLE CAUSE TO REQUIRE THE GRIEVANT TO SUBMIT TO A DRUG TEST AND THE EMPLOYER DID NOT HAVE JUST CAUSE TO DISCHARGE THE GRIEVANT.

Pursuant to the collective bargaining agreement, and the issue submitted to the arbitrator, the grievant, Alan Cash, could only be discharged by Exxon for "just cause".

The arbitrator determined that Exxon did not have just cause to discharge Mr. Cash. As part of the award, the arbitrator found that the grievant did not have possession of a controlled substance, thus the company did not have reasonable cause to require Mr. Cash to submit to a drug test. (App. 61a-63a). The District Court below confirmed the arbitration award and the Court of Appeals for the Third Circuit affirmed that decision. The well-reasoned decision of the Third Circuit follows established labor arbitration case precedent.

The Petitioner contends that this Court should grant the writ of certiorari because the court below erred by not vacating the arbitration award on public policy grounds. The Petitioner postures that the confirmation of the arbitration award and the reinstatement of the grievant will cause an environmental catastrophe (Pet. 9). The Petition is replete with misstatements of fact and law. The Petition does not require this Court to resolve any unsettled questions of Federal law or conflicting decisions of this Court. The Petition should therefore be denied.

A. The Court below gave due deference to the arbitrator's determination.

Courts exercise very limited review of an arbitration award issued pursuant to a collective bargaining agreement. *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 36-38, 108 S. Ct. 364, 369-70, 98 L. Ed. 2d 286 (1987) ("*Misco*"); *Exxon Shipping Company v. Exxon Seamen's Union*, 73 F.3d 1287, 1291 (3d Cir. 1996) ("*Exxon III*"). As this Court has observed, "[t]he federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards". *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, 80 S. Ct. 1358, 1360, 4 L. Ed. 2d 1424 (1960) ("*Enterprise Wheel*"), *accord*, *Exxon III*, 73 F.3d at 1291. Accordingly, courts are not authorized to reconsider the merits of an arbitration award. *Misco*, 484 U.S. at 36, 108 S. Ct. at 370; *Enterprise Wheel*, 363 U.S. at 596, 80 S. Ct. at 1360. A court may not reconsider the merits of an award even when the parties allege that the award rests on errors of fact and/or errors of law. *See, United Industrial Workers v. Government of Virgin Islands*, 987 F.2d 162, 170 (3d Cir. 1993); *Interstate Brands Corp. v. Teamsters Local Union No. 135*, 909 F.2d 885, 888 (6th Cir. 1990), *cert. denied*, 499 U.S. 885, 111 S. Ct. 1104, 113 L. Ed. 2d 214 (1991).

The parties have authorized the arbitrator to give meaning to the language of the agreement. *Jeddo-Highland Coal Company v. District 2, United Mine Workers of America*, 884 F. Supp. 926, 936 (M.D. Pa. 1995). It is the job of the arbitrator to interpret and apply the terms of the parties' collective bargaining agreement. *Enterprise Wheel*, 363

U.S. at 597, 80 S. Ct. at 136. As long as the arbitrator's award "draws its essence from the collective bargaining agreement and is not merely the arbitrator's own brand of industrial justice", the court must enforce the award. *Enterprise Wheel*, 363 U.S. at 597, 80 S. Ct. at 1361.

Pursuant to the terms of the collective bargaining agreement in effect, an employee could only be discharged or disciplined for "cause", which had been interpreted to mean "just cause". The agreement does not define that phrase. Thus, when the parties submit to the arbitrator the question of whether the grievant was discharged for "just cause", the arbitrator is required to decide what "just cause" means. *United Transportation Union Local 1589 v. Suburban Transit Corp.*, 51 F.3d 376, 380 (3d Cir. 1995). The arbitrator must apply all the surrounding facts and circumstances to his interpretation of the agreement to determine whether or not the discharge was proper. *Arco-Polymers, Inc. v. Local 8-74*, 671 F.2d 752, 756 (3d Cir.), *cert. denied*, 459 U.S. 28, 103 S. Ct. 63, 74 L. Ed. 2d 65 (1982). A highly deferential standard of review is commonly extended to the substantive issue of what constitutes sufficient and reasonable cause for discharge. *Interstate Brands*, 909 F.2d at 889 (citations omitted).

Generally, in a discharge arbitration case, the employer will assert that the employee has engaged in conduct which is violative of a specific company rule or policy, and that said conduct was cause to discharge the employee. The operation of a company rule may be at odds with the "just cause" provision. In such cases, harmonizing discordant provisions is clearly a matter for the arbitrator and is well within his authority. *Local 238 International Brotherhood of Teamsters, Chauffeurs, Warehousemen*

and Helpers v. Cargill, Inc., 66 F.3d 988, 990 (8th Cir. 1995) (citations omitted); *Arco Polymers*, 671 F.2d at 756.

In *Arco Polymers, supra*, a company rule stated that an employee would be subject to discharge if he/she were absent for more than four days without good and sufficient cause. 671 F.2d at 752. The collective bargaining agreement between the union and Arco Polymers also contained a "just cause" for discharge provision. The grievant was discharged for being absent for 19 days without good and sufficient cause. The arbitrator found that the grievant was unjustly discharged. *Id.* at 752. The District Court vacated the award. The Third Circuit reversed.

Upon review, the Third Circuit noted that the rule did not give the company unfettered discretion to discharge without being subject to review under the "just cause" provision. *Id.* at 756. Moreover, the language of the rule – "shall be subject to discharge" – was interpreted by the arbitrator to mean that discharge was not mandatory. *Id; accord, Super Tire Engineering Company v. Teamsters Local Union No. 676*, 721 F.2d 121, 124-125 (3d Cir. 1983), *cert. denied*, 469 U.S. 817, 105 S. Ct. 83, 83 L. Ed. 2d 31 (1984).

In a discharge case involving the "just cause" provision and allegations of the violation of a company rule, not only is the arbitrator interpreting the "just cause" provision, but he/she is also required to interpret the rule. *See, General Drivers, Warehousemen and Helpers Local Union 968 v. Sysco Food Services, Inc.*, 838 F.2d 794, 798 (5th Cir. 1988). In *Sysco Food Services*, the grievant was accused of insubordination. In analyzing whether the grievant

violated the company's rule on insubordination, the arbitrator had to determine whether the disciplined employee engaged in the specific conduct which resulted in the disciplinary action. *Id.* at 798. In order for an arbitrator to find "just cause" to discharge an employee, the employer must prove that the grievant engaged in conduct violative of the elements of the offense charged. Once the arbitrator finds that the grievant did not engage in conduct violative of the rule, and that there is no just cause to discharge the grievant, then the arbitrator has the authority to fashion the appropriate remedy. *Id.* at 799; *see, Cargill, Inc.*, 66 F.3d at 99. The judicial deference to an arbitrator's award extends to the remedy awarded. *See, Enterprise Wheel*, 363 U.S. at 597, 80 S. Ct. at 1361; *accord, General Teamsters Local 326 v. M & G Convoy, Inc.*, 848 F. Supp. 513, 517 (D. Del. 1994).

This case follows the above-cited established case precedent. The bargaining unit employees could only be discharged for "just cause". The policy unilaterally implemented by the company indicated that the company could require an employee to submit to a drug or alcohol test "where cause exists to suspect alcohol or drug misuse". (App. 66a). The rule went on to indicate that a "refusal to submit to a drug test was grounds for disciplinary action, including discharge". (App. 66a). Thus, discharge was not made mandatory.

On September 27, 1988, the company issued a letter which reiterated the above policy. (App. 67a). The letter indicated that a violation of the policy "will result in immediate termination". (App. 71a). However, the letter also indicated that each incident would be reviewed on a "case by case" basis. (App. 71a).

The above letter did not constitute an amendment to the official promulgated policy. Instead, the letter was an indication of how the company would interpret the policy.

It is reasonable to interpret the policy and the letter to allow a penalty lesser than a discharge. Any discipline under the policy remains subject to the just cause provision. The stipulated issue submitted to the arbitrator, i.e., was Mr. Cash discharged for just cause, shows that Exxon did not think the discharge under the policy was "strictly a function of management". *See, Cargill, Inc.*, 66 F.3d at 990.

In order for the arbitrator to find "just cause" to sustain the grievant's discharge, the company had to prove that it had "reasonable cause" or "just cause" to require the grievant to submit to a drug test. To prove "reasonable cause", the company had to present facts to support a reasonable suspicion that the grievant had either used or had possession of drugs. Since the charge of use or possession of drugs is a criminal offense, arbitrators have required the employer to prove their case by clear and convincing evidence, or beyond a reasonable doubt. Elkouri & Elkouri, *How Arbitration Works*, Fourth Edition, page 662-663 (BNA 1985); *Graphic Communications International Union Local 121-C v. Southern Coupon, Inc.*, 852 F. Supp. 970, 975 (N.D. Ala. 1993). Upon a review of all of the facts and circumstances of this case, and in light of a prior Exxon arbitration award wherein the arbitrator found that the company did have reasonable cause to test the grievants, the arbitrator in this case determined that the company did not carry its burden of proof – that there was no reasonable cause to require the

grievant to submit to a drug test – thus there was no just cause to discharge him. Since the arbitrator's award draws its essence from the collective bargaining agreement, the courts below confirmed the award.

The decision of the court below is not an aberration. There are several cases analogous to this case.

In *Misco*, the company promulgated a rule which indicated that possession or use of a controlled substance on company property was grounds for discharge. 484 U.S. at 32, 108 S. Ct. at 368. The grievant was apprehended by police sitting in the back seat of a car in the company parking lot with marijuana smoke in the air and a lighted marijuana cigarette in the frontseat ashtray. 484 U.S. at 33, 108 S. Ct. at 368. The employee was discharged due to possession of drugs on company premises. *Id.*

The issue submitted to the arbitrator was whether there was just cause to discharge under the company rule. *Id.*

The arbitrator found that there was no just cause to discharge the grievant. 484 U.S. at 34, 108 S. Ct. at 368. The arbitrator found that the company failed to prove that the grievant had possessed or used marijuana on company property; finding the grievant in the backseat of a car with a burning marijuana cigarette in the frontseat ashtray was insufficient proof that the grievant had used or possessed drugs on company property. *Id.*; *also see, Bechtel Construction, Inc. v. Laborers' District Council*, 130 LRRM (BNA) 2749 (E.D. Pa.), *aff'd*, 865 F.2d 249 (3d Cir. 1988), *cert. denied*, 489 U.S. 1017, 109 S. Ct. 1133, 103 L. Ed. 2d 194 (1989).

In *Cargill, Inc., supra,* as in this case, the company promulgated a drug and alcohol policy which included reasonable suspicion testing. 66 F.3d at 989. The policy indicated that an employee refusing a test would be considered in violation of the policy and "will be terminated". *Id.* at 990. Disciplinary action taken pursuant to the policy remained subject to the "just cause" provision. *Id.*

The grievant was discharged because of his refusal to submit to a drug and alcohol test. *Id.* at 988. The arbitrator found that the grievant had consumed alcohol on the job, and knowingly and willfully refused to submit to the test. *Id.* at 989. Nonetheless, the arbitrator found that the company did not have sufficient cause to discharge the grievant, and instead ordered a disciplinary suspension as part of a "last chance offer of reemployment in lieu of discharge". *Id.* The court confirmed the arbitration award. The court found that the arbitrator was within his authority to harmonize the drug and alcohol testing policy and the just cause provision. *Id.* at 990. Thus, upon finding that there was no just cause for discharge, the arbitrator was within his authority to order a last chance remedial award.

In *Trinity Industries v. United Steelworkers of America,* 891 F. Supp. 342 (N.D. Tex. 1995), the company had a drug and alcohol policy wherein the company could require an employee to submit to a test. *Id.* at 345. A supervisor caught two welders in a vacant building and he detected the smell of marijuana smoke. *Id.* at 343. The supervisor ordered the two employees to submit to a drug test, but they refused and were discharged.

The issue submitted to the arbitrator was whether there was just cause for discharge. The court upheld the arbitrator's decision that the grievants were denied certain due process rights, and thus held there was no just cause for discharge. The arbitrator converted the discharge to a disciplinary suspension without pay which is the same remedy the arbitrator ordered in this case. *Also see, United Food and Commercial Workers International Union, Local 588 v. Foster Poultry Farms,* 151 LRRM (BNA) 2013 (9th Cir. 1995) (The Ninth Circuit confirmed an arbitration award wherein a driver who was discharged for his refusal to take a random drug test required under Department of Transportation regulations was ordered reinstated).

B. The Arbitration Award does not violate public policy.

It is well settled that a court may not enforce a collective bargaining agreement or an arbitration award that is contrary to public policy. *See, W.R. Grace & Co. v. Local Union 759,* 461 U.S. 757, 765-66, 103 S. Ct. 2177, 2183, 76 L. Ed. 2d 298 (1983). Such public policy must be an explicit, well-defined and dominant public policy, which is to be ascertained by reference to the laws and legal precedents. *Id., quoting, Muschany v. United States,* 324 U.S. 49, 66, 65 S. Ct. 442, 451, 89 L. Ed. 744 (1945); *accord, Misco,* 484 U.S. at 43, 108 S. Ct. at 373-74. General considerations of supposed public policy do not trigger the public policy exception. *Foster Poultry Farms,* 151 LRRM at 2016 (citations omitted). The party seeking to vacate an arbitration award bears the burden of showing that the award violates an explicit well-defined and dominant

public policy, and it must demonstrate that the policy is one that specifically militates against the relief ordered by the arbitrator. *Id.* (citations omitted). The courts have been and should be reluctant to vacate an arbitral award on public policy grounds – there is no broad judicial power to set aside arbitration awards as against public policy. *Id., citing, Arizona Electric Power Cooperative, Inc. v. Berkeley*, 59 F.3d 990, 992 (9th Cir. 1995), *citing, Misco*, 484 U.S. at 43, 108 S. Ct. at 373.

Throughout all of the proceedings below, Exxon has argued that Mr. Cash's refusal to submit to a drug test constitutes a violation of the Coast Guard Regulations, specifically 46 C.F.R. 16.250. (App. 77a). Exxon continues to argue that the arbitrator's award reinstating Mr. Cash violates public policy because said award is violative of the above-cited Coast Guard regulation and also the policy underlying the regulation and several other statutes. Exxon's public policy argument is erroneous for a number of reasons which will be discussed in turn.

When the public policy exception is raised, the Court must accept the arbitrator's findings of fact. *Misco*, 484 U.S. at 45, 108 S. Ct. at 374; *Exxon Shipping Company v. Exxon Seamen's Union*, 993 F.2d 357, 360 (3d Cir. 1993); *Iowa Electric Light and Power Company v. Local Union 204, International Brotherhood of Electrical Workers*, 834 F.2d 1424, 1427 (9th Cir. 1987). The arbitrator in the case at bar specifically found that Mr. Cash did not use nor had possession of the marijuana gleanings discovered in the chief pumpman's cabin. The arbitrator also determined that Exxon did not have reasonable cause to require Mr. Cash to submit to a drug test. In light of the above

findings of fact, the Coast Guard's reasonable cause testing provision is not implicated. Exxon did not have reasonable cause to require Mr. Cash to submit to a drug test under 46 C.F.R. 16.250.

As part of its presentation, Exxon submitted to the arbitrator the Coast Guard drug testing regulations. Exxon argued that it had reasonable cause to test and discharge Mr. Cash pursuant to the Coast Guard regulations. The arbitrator stated:

> If there was no reasonable cause to conclude that the grievant brought the drug into his cabin – and the above analysis finds that there was not – then the Coast Guard regulations would not call for a drug test, and no violation of the regulations could be said to exist.

(App. 60a). Although this finding is beyond the scope of the parties' agreement, since Exxon argued the statutory effect, Exxon should be held bound by the arbitrator's findings.

Regardless of the arbitrator's decision, the Coast Guard's reasonable cause testing regulation does not specifically militate against the arbitrator's reinstatement order for Mr. Cash.

The Coast Guard regulation regarding reasonable cause testing, indicates that an employee may be required to submit to a test when the employer has a reasonable belief that the grievant had used drugs. In this case, there was no indication of use or probable use of drugs by Mr. Cash so there was no reasonable cause to require him to submit to a drug test.

When the Coast Guard promulgated its regulations, it was very specific about penalties. If an employee refuses to take a drug test after a serious marine accident, or if an employee tests positive for drugs, according to the regulations, the employee must be immediately relieved of all duties on the ship and he/she is subject to having his/her license suspended or revoked. 46 C.F.R. Sections 4.06-5(c) and 16.201(c) and (d), and 53 Fed. Reg. 47072. If an employee refuses a random drug test, he/she may not be employed. 46 C.F.R. Section 16.230(f).

Pursuant to the Coast Guard's reasonable cause testing provision, 46 C.F.R. Section 16.250, an employee who refuses to take a reasonable cause test is not discharged from employment nor removed from his/her duties on the ship. Other Federal regulatory agencies have adopted provisions that indicate that a refusal to take a test is to be treated the same as a positive test. (Pet. 11-12). The Coast Guard has not promulgated such a regulation. The only penalty an employee will receive under the Coast Guard's regulations for refusing to take a reasonable cause drug test is that he/she will have his/her name placed in the vessel's official log book, if such a book is required. 46 C.F.R. 16.250(c). (App. 77a, 80a). Thus, the arbitrator's reinstatement order of Mr. Cash is not violative of the Coast Guard's regulations. *See, Foster Poultry Farms*, 151 LRRM at 2016-17.

Exxon argues that the decision of the court below is contrary to recent public policy case precedent involving the reinstatement of employees in safety sensitive positions. (Pet. 10-11). In each of the cases cited, the employee was in a safety sensitive position. In each of the cases cited, evidence showed that the employee was under the

influence of drugs or alcohol while at work, but based upon other considerations, the arbitrator found no just cause for discharge. In all of the cases, the employees' conduct violated a company policy, and in most a specific positive law.

This case is clearly distinguishable. In this case, the grievant was admittedly not under the influence of drugs or alcohol at work. Second, the arbitrator did not find the grievant guilty of a violation of the company policy. There is no violation of a positive law or policy underlying same.

Exxon argues that the effect of the decision of the court below is contrary to the public policy of a drug-free workplace. (Pet. 10). Exxon further contends that the decision below will "measurably increase the likelihood of tanker accidents and decrease tanker safety" (Pet. 9). While it is admitted that avoiding an environmental accident is of utmost importance, an arbitration award (this arbitration award) should not be vacated on public policy grounds based on "general considerations of supposed public interest". *W.R. Grace*, 461 U.S. at 766, 103 S. Ct. at 2183; *Foster Poultry Farms, supra.*

Exxon has expressed a concern about the negative precedent established by the decision below. That decision need not be reversed to address that concern. Instead, Exxon can and has addressed its concerns about drug testing through the collective bargaining process. *Exxon Shipping Company*, 993 F.2d at 360, n.3.

Exxon has filed its Petition for a Writ of Certiorari to reverse the decision of the Third Circuit and vacate the arbitration award dated November 27, 1992. Exxon's

argument is premised on an alleged violation of public policy. However, in light of the Arbitrator's finding that Mr. Cash did not use or possess a controlled substance, and there was no reasonable cause to require Mr. Cash to submit to a drug test, Exxon has failed to show that the arbitrator's reinstatement order violates any positive law, or any explicit, well-defined, dominant public policy. This case is specific on its facts, so there is no likelihood of a repeat case. The perceived tarnish to Exxon's image from the decision should not be grounds for a grant of Exxon's Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Dated: May 10, 1996

Respectfully submitted,

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